*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION Nos.12875 and 13555 of 2004

%16-11-2004

Gauri Reddy (in W.P.No.12875 of 2004)

Maraboyina Rohit (in W.P.No.13555 of 2004)

..PETITIONERS

Vs.

$ The Registrar, N.T.R.University of Health Sciences, Vijayawada

(in W.P.No.12875 of 2004)

$ The Convenor, Jawaharlal Nehru Technological University, Hyderabad and others
(in W.P.No.13555 of 2004)

..RESPONDENTS

! COUNSEL FOR PETITIONER: Mr.K.Ashok Reddy (in WP.12875 of 2004)

! COUNSEL FOR PETITIONER: Mr.V.S.R.Anjaneyulu (in WP.13555 of 2004)

^ COUNSEL FOR RESPONDENTS: Dr.Y.Padmavathi (in both the writ petitions)

<GIST

>HEAD NOTE:

?CASES REFERRED:

1. 2003 (5) SCC 350 = JT 2003 (III) SC 1
2. (1977) 1 An.W.R.224
3. 1988 (2) ALT 227 (DB)
4. 1988 (2) ALT 463
5. AIR 1991 AP 1
6. 1994 (3) ALT 1 (FB)
7. AIR 2000 AP 308 (FB) para 24(7)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 12875 of 2004

Between:

Miss Gauri Reddy D/o. Col.Gopal Reddy,

R/o. Plot No.5, H.I.G Phase-I, Vanasthalipuram, Hyderabad-500070.

..... PETITIONER

AND

N.T.R. University of Health Sciences, Vijayawada, represented by its Registrar, Vijayawada.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or directions essentially in the nature of writ of mandamus declaring the action of the respondent herein in not considering the case of the petitioner herein for admission into 1-Year M.B.B.S/B.D.S course in the respondent University under non-local quota of seats reserved for NCC candidates as bad, illegal, arbitrary, discriminatory and unconstitutional and declare that the petitioner herein is entitled for admission into 1 year M.B.B.S/B.D.S course in the respondent university under non-local quota of seats reserved for NCC candidates.

Counsel for the Petitioner: MR.K.ASHOK REDDY

Counsel for the Respondent: DR.Y.PADMAVATHI

WRIT PETITION NO.13555 OF 2004

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Between:

Maraboyina Rohit S/o M. Kamalakar,
R/o H. NO. 4-9-168/1, RTC Colony, Hayathnagar, Ranga Reddy District

..... PETITIONER

AND

1 Jawaharalal Nehru Technological University rep by Convenor,

Hyderabad.
2 NTR University of Health Sciences, rep. by Vice-Chancellor, Andhra

Pradesh, Vijayawada-520 008.
3 The Chairman, Under Graduate Admission Committee, NTR University

of Health Sciences, Vijayawada.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents (a) in treating the Petitioner as non-local (b) non-Providing of appropriate reservation to the category of non-locals in the Sports & Games Personnel Quota as illegal and ultra vires to the provisions of Part-III of the Constitution of India directing the respondents to provide one seat to the petitioenr for admission in MBBS Course for the Academic Year 2004-2005 under Sports & Games Personnel Quota.

Counsel for the Petitioner: MR.V.S.R.ANJANEYALU

Counsel for the Respondents : Dr.Y.Padmavathi

The Court made the following :

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THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NOS.12875 AND 13555 OF 2004

ORDER:

A common question is involved in both these writ petitions. Therefore, though both the writ petitions were heard on different dates, they are being disposed of by this common order. The question of considerable importance that falls for consideration in these two writ petitions is whether competent authority i.e., N.T.R.University of Health Sciences (hereafter called, the University) while filling up the seats in I year M.B.,B.S., course reserved for special categories like N.C.C. and games/sports as per Rule 9(3) of Andhra Pradesh Government Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2003 (for short, the Rules) is required to keep 15% of such seats reserved for special categories as unreserved to be filled up with the candidates not belonging to any of the local areas, namely, Andhra University (AU) local area, Osmania University (OU) local area and Sri Venkateswara University (SVU) local area – in the State of Andhra Pradesh.

The fact of the matter is not much in dispute. The petitioner in W.P.No.12875 of 2004 is daughter of retired army officer. Prior to completion of Intermediate course in State of Andhra Pradesh, she had her education outside Andhra Pradesh and therefore, she cannot be treated as local candidate for the purpose of A.P. Educational

Institutions (Regulation of Admissions) Order, 1974 (hereafter called, the Presidential Order), in relation to any of the local areas in the State. So to say she is a
non-local candidate. The petitioner in W.P.No.13555 of 2004 studied in Central Middle School and Edmond Memorial High School, Oklahoma, USA and later completed his Intermediate course in Andhra Pradesh. He is also not a local candidate as defined in the Presidential Order.

Both the petitioners appeared for Engineering, Agricultural and Medical Common Entrance Test, 2004 (EAMCET-2004) and pursuant to notification issued by the University, which is competent authority as per the Rules to make admissions, applied seeking admission to I year
M.B.,B.S., course, claiming reservation for special categories. The petitioner in the first writ petition claimed reservation under priority No.1 in NCC category claiming that she represented country under Youth Exchange Programme in Nepal during February, 2004 and also passed NCC 'B' Certificate examination. The petitioner in the other writ petition claimed that he secured third place in 14th National Senior Fencing Championship and therefore he falls under priority No.19 in games/sports category. The petitioners are not selected for admission and therefore they are before this Court contending that if the University keeps 15% of medical seats earmarked for special categories as unreserved, they would be selected for admission.

At the outset, this Court observes that a perusal of Appendix III to the regulations for admission to I year M.B.,B.S., course prescribed by the University in the prospectus would show that representing the State in the National Championships for men and women and winning third place would entitle a candidate to claim priority under 19. In the case of the petitioner in W.P.No.13555 of 2004, as per the Certificate issued by Kerala Fencing Association enclosed to the writ petition, the petitioner participated in 'Sabre' team event in National Senior Championship and the team was placed at third place. It is doubtful whether the petitioner can claim reservation in games/sports quota. However, having regard to the determination of the other larger question in the matter, this Court is not inclined to record any finding on this aspect and this question as participation as member of team would also "be a sports qualification" for special treatment, is left open to be decided in appropriate case.

The University has filed counter affidavits in both the writ petitions. It is the contention of the University that when reservation is made for special categories like NCC and games/sports, it is not necessary further reserve 15% as unreserved seats where percentage of reservation is very limited in that only 0.25% seats are reserved for NCC and 0.50% seats are reserved for games/sports category. University placed strong reliance on the judgment of the Supreme Court in **Registrar, NTR University of Health Sciences v G.Babu Rajendra Prasad.**

Learned counsel for the petitioner in the first writ petition
Sri K.Ashok Reddy and the learned counsel for the petitioner in the second writ petition Sri V.S.R.Anjaneyulu submit as follows. As per paragraph 5 of the Presidential Order, in all the non-statewide institutions while making admissions to

non-statewide courses, the University or any other authority is required to reserve 85% of the available seats for local candidates and the balance of 15% seats shall be unreserved seats to be filled up with non-local candidates. The University has not followed this rule and therefore a direction has to be issued to the University to keep at least one seat as per paragraph 5 of the Presidential Order in every special category as unreserved to be filled up by high ranking meritorious candidates among particular category of candidates. **Per contra**, learned Standing Counsel for the University Dr.Y.Padmavathi placed strong reliance on the judgment of the Supreme Court in **Babu Rajendra Prasad's case** (supra) and contends that when the seats for special categories are limited, it is not necessary to earmark 15% of the seats for non-local candidates.

The Rules govern the admissions to I year M.B.,B.S., course is not disputed nor denied. The mandatory nature of paragraph 5 of the Presidential Order prescribes reservation of 85% of seats for local candidates keeping the remaining 15% of the seats unreserved, while making admissions in every course in a non-statewide educational institutions is also not denied. Therefore, it is not necessary to elaborately refer to these provisions. Rule 9 of the Rules contains Rule of Reservation for admission. Rule 9(3) of the Rules deals with "reservation for special categories" and reads as under.

(3) Reservation for Special Categories:

(a) Seats shall be reserved in each course for the following categories, to the extent indicated against them;

(i) Physically Handicapped …3%

(ii) National Cadet Corps … ¼ % (0.25%)

(iii) Games and Sports … ½ % (0.50%)

(*) Note: 3% Reservation provided to Physically Handicapped with the locomotory disorders and that too with disability of lower limbs between 50% to 70%, as per the instructions of Govt. of India Lr.F.No.U.12021/8/2002-MEC/ME.III, dt.12.05.2004 under Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

(iv) 1% for the Children of Ex-servicemen and serving service personnel of the three wings of the Defence Services i.e, Army, Navy and Airforce, subject to the condition that the Ex-service men etc., are residing for a minimum of five years in Andhra Pradesh, provided that if suitably candidates are not available equivalent to fulfill the above reservation, the condition of five year minimum period of residence shall not be insisted upon.

(b) The priorities in respect of the categories mentioned in item (a) above as declared by the Government vide G.O.Ms.No.254, HM&FW (E1) Department, dated 28.04.1993 and subsequent amendments thereto from time to time.

NOTE: The candidates claiming reservation benefits under the above categories shall produce original documents in support of their claim to the Committee for Admissions and he shall be entitled to refer the original documents of the candidates claiming reservation for scrutiny and confirmation to the following authorities.

(i) NCC … To the Director of NCC, Andhra Pradesh

(ii) Sports & Games … To the Vice-Chairman and Managing Director, Sports Authority of Andhra

Pradesh (SAAP)

(iii) Physically Handicapped … To the Medical Board Constituted by the Competent Authority.

(iv) CAP … To the Director, Sainik Welfare Department, Andhra Pradesh.

In these cases, we are concerned with reservation for NCC at 0.25% and for games/sports category at 0.50%. Sub-rule (iii) of Rule 9(3) does not specifically stipulate that out of the seats reserved for a particular special category, there should be again 15% seats earmarked as unreserved seats. Paragraph 5 of the Presidential Order reads as under.

5. Reservation in non-State-wide Universities and educational institutions:- (1) Admission to eighty-five percent of the available seats in every course of study provided by the Andhra University, the Nagarjuna University, the Osmania University, the Kakatiya University or Sri Venkateswara University or by any educational institution (other than a State-wide University or a State-wide Educational Institution) which is subject to the control of the State Government shall be reserved in favour of the local candidates in relation to the local area in respect of such University or other educational institution.

(2) While determining under sub-paragraph (1) the number of seats to be reserved in favour of local candidates any fraction of a sat shall be counted as one:

Provided that there shall be at least one unreserved seat.

Even the Presidential Order does not specifically say that 15% of the seats, which are not reserved for local candidates in a non-statewide educational institution, should be reserved for non-local candidates and those seats should be allotted to candidates, who are not local candidates. What all paragraph 5 mandates is that at least 85% of the available seats must be reserved for local candidates. The minimum number of seats reserved for local candidates in all circumstances must be 85% of the seats and in a given case, the local candidates may even compete for 15% unreserved (for local candidates) seats in accordance with their merit. (**See D.Pampapathi Reddy v Government of A.P.**)

I n **Dr. Fazal Ghafoor v Principal, Osmania Medical College, Hyderabad, Dr.K.Ashok Kumar v University of Health Sciences and B.Ramesh v University of Health Sciences**, the Division Benches interpreting the proviso to paragraph 5(2) of the Presidential Order held that where there is only one seat in a given course in local area, it is not necessary to treat the same as unreserved by virtue of the proviso to paragraph 5(2) of the Presidential Order. In **B.Sudhakar v Union of India**, a Full Bench of this Court agreed with a view expressed by Division Bench in the cases referred to hereinabove and held that the law laiddown by the Division Benches is correct. Therefore, either paragraph 5 of the Presidential Order or Rule 9(3) of the Rules do not support the view canvassed by the learned counsel for the petitioners that out of the total seats reserved for special categories, there should be at least 15% seats reserved for non-local candidates. The submission therefore is liable to

be rejected.

Learned counsel for the petitioners as well as learned Standing Counsel for University placed strong reliance on **Babu Rajendra Prasad's case** (supra) in support of their submission. A Full Bench of this Court, to which I was a member, in **Registrar, NTR University of Health Sciences v G.B.Rajendra Prasad (FB)** considered the question whether the reservations in terms of Article 15(4) of the Constitution of India in favour of scheduled castes, scheduled tribes and backward classes should be provided even in respect of 15% of the unreserved seats under the Presidential Order, 1974. In paragraph 24 (of AIR) of the judgment, Full Bench, *inter alia,* laid down that reservation for SCs, STs and BCs cannot be restricted to 85% of the seats reserved for local candidates and that such reservation should be provided even in relation to 15% unreserved seats. It was also observed therein that if such reservation for reserved classes in 15% unreserved seats is not workable, it is for the University to evolve any other alternative method. In paragraph 24(7), the Full Bench further laiddown as under.

While following the procedure in conformity with the procedure provided if the candidates belonging to reserved category cannot be accommodated on account of limited number of seats available, it cannot be held that reservation has not been followed. May be, in such circumstances, reservation may not be workable as it has become axiomatic that where the number of seats, like being one, the reservation is not workable. In pari materia with the said reason, if the reservation is not workable in view of the specific limited circumstances in a given case, it cannot be held that the principle of reservation or any provisions of the Constitution has been violated.

It is therefore clear that if the candidates belonging to reserved category cannot be accommodated on account of limited number of seats available, it cannot be held that reservation has not been followed and it cannot be said that the Rule of Reservation has been violated. This case was carried to Supreme Court by the University.

In **Registrar, NTR University of Health Sciences v G.Babu Rajendra Prasad** (supra), the Supreme Court set aside the decision of the Full Bench of this Court. Nonetheless, to my mind, in so far as paragraph 24(7) of the Full Bench judgment of this Court, as extracted hereinabove, the Supreme Court also took a similar view. In paragraph 14 of SCC, the Apex Court laiddown as under.

It is not in dispute that limited seats are available for admission in the superspeciality courses. It may be true that normally the reservation has to be made for the entire State but in terms of Article 371-D of the Constitution of India reservation has to be made regionwise. The seats have been reserved indisputably on total available seats in each discipline and those who come within the zone of consideration are considered for admission from amongst the reserved category candidates. Once it is found that reservation has been made for the reserved-category candidates on the total number of seats available in each course, the High Court must be held to have committed a manifest error in issuing the impugned direction.

The Supreme Court also held that the criteria for admission of a candidate in the University on the ground of being local or non-local is referable to University area and not the boundaries of State of Andhra Pradesh. Therefore, there is force in submission made by the University that when limited number of seats are available,

it would not be possible to strictly adhere to the Rule of Reservation on any count. In NCC as well as games/sports category only limited number of seats are available and as these seats are provided by following rule of horizontal reservation, that is to say, among OC candidates, SC, ST and BC candidates, the University was correct in following the local area reservation under the Presidential Order, which takes precedence over all types of other reservations.

In the result, for the above reasons, the writ petitions are devoid of merit and are accordingly dismissed without any order as to costs.

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(V.V.S.RAO,J)

16.11.2004.

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Note: LR copy be marked.

(By Order)

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Note: Issue CC in three days.

(By Order)

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To

One fair copy to the Hon'ble Mr.Justice V.V.S.Rao (for his Lordships kind perusal)

1. The Registrar, N.T.R.University of Health Sciences, Vijayawada.
2. The Convenor, Jawaharlal Nehru Technological University, Hyderabad.
3. The Vice-Chancellor, N.T.R.University of Health Sciences, Vijayawada.
4. The Chairman, Under Graduate Admission Committee, N.T.R.University of Health Sciences, Vijayawada.
5. 8 LR copies.
6. Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

7. The Secretary, A.P.Advocates Association Library, High Court Buildings, Hyderabad.

8. 2 CD copies.